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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL, CIVIL JURISDICTION

NOTICE OF MOTION NO.380 OF 2006
IN
WRIT PETITION NO.11 OF 2005

Municipal Corporation of
Greater Bombay ..Petitioner
Vs.
State of Maharashtara & Ors..Respondents

Mr. K.K. Singhvi, Senior Counsel with Mrs. P.A. Purandhare,for the Petitioner
Dr. Virendra Tulzapurkar, Senior Counsel with Mr. Milind Jadhav i/b. Shelke & Co., for the Respondent Nos. 4 to 14.
Mr. M.D. Naik, AGP for Respondent Nos. 1 and 3.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.
DATE: 22ND DECEMBER, 2006

P.C.

. This is a Motion by the respondents praying amongst others for deposit of an additional sums in terms of the order of this Court dated 29th November, 2005. The relief is also sought for early hearing as also to direct the release of the amount deposited in favour of the petitioner.

2. In terms of the calculation sheet submitted by the respondents the pensioners have deposited in this Court a sum of RPS.17,23,29,933/-.

3. As there were disputes about the amount of award by an order dated 17th November, 2006 we have directed the S.L.A.O. to file an affidavit to

compute the amount payable in terms of the Award.

4. Shri Madhav Chimaji, Deputy Collector, (S.L.A.O) (4) has filed an affidavit setting out that in terms of the Award the total amount to be deposited was Rs.6,63,33,250.45 out of which a sum of Rs.17,57,351/- has been paid to the owners. If we accept this figure then the petitioners are not bound to deposit any further sum. Considering that there is no question of passing any further orders. The amount can always be calculated,if there be dispute at the time of final hearing of the petition.

5. In so far as the release of amount is concerned, the normal rule would be that a party can withdraw the amount on furnishing bank guarantee and continuing the bank guarantee till the matter is heard and finally disposed of by this Court and for a further period of six months thereafter unless there are exceptional circumstances. In the instant case the petitioners are disputing the amount awarded on various grounds. The petitioners have also relied on the judgment of the Supreme Court in the case of R.L.Jain (D) by LRs. vs. D.D.A. & Ors., AIR 2004 SC 1904 as also unreported judgment of the Division Bench of this Court in Municipal Corporation of Greater Mumbai vs. State of Maharashtra & Ors., in Writ Petition No.2687 of 1999 decided on September

19, 28, 2005.

6. After hearing the parties in our opinion no case is made out from departing from the normal principle which is furnishing bank guarantee.

7. If respondents seek to withdraw the amount the respondents will have to furnish bank guarantee for the amount sought to be withdrawn and keep the bank guarantee alive during the pendency of the petition and for a period of six months thereafter.

8. In so far as expediting the hearing of the petition is concerned, there is nothing to indicate that any of the respondents are aged 65 years. Considering that early hearing is rejected. Motion disposed of accordingly.

(**F.I. REBELLO, J)**

(**ANOOP V. MOHTA J).**